

CONTRACT FOR SERVICES

This contract is between the Indiana Department of Environmental Management (hereinafter referred to as "State") and Town of Milltown (hereinafter referred to as "Contractor").

WHEREAS, the State desires to reduce excessive flow within sanitary sewer systems;

WHEREAS, the State desires to contract for the services to reduce infiltration and inflow into the sanitary sewer system and reduce the effects of pollution from the system on Blue River;

WHEREAS, the Contractor has the expertise and is willing to perform the services necessary to carry out the management infiltration and inflow reduction;

NOW, THEREFORE, the above-named parties enter into this contract upon the following terms and conditions:

1. Duties of Contractor

The Contractor shall provide the following services relative to this contract:

- A. The Contractor shall perform an inventory and mapping of the collection system.
 - 1. Mapping shall include all streets, manholes, sanitary sewers (and sizes), and pump stations with their force mains.
 - 2. The Contractor shall divide the collection system into drainage basins or subsystems for subsequent evaluation and reporting.
- B. The Contractor shall perform a manhole evaluation which shall include the following:
 - 1. Verification of the location of the manholes.
 - 2. Verification of inlet and outlet pipe sizes and orientation.
 - 3. Evaluation of structural integrity and for existing or potential infiltration and inflow entering the manhole.
 - 4. Identify rehabilitation requirements.
- C. The Contractor shall perform accurate flow monitoring and will examine the monitoring equipment to assure proper functioning on a weekly basis.

1. The Contractor will place flow meters in areas that will provide data for each individual subsystem.
- D. The Contractor shall perform internal televising in those subsystems that exhibit major sources of infiltration as recorded during the flow metering phase.
1. Selected sewer segments will be internally televised during wet periods of the year, during high ground water levels.
 2. No more than 800 feet or two (2) manhole runs should be televised at one time, with upstream lines plugged to isolate the selected segments.
- E. The Contractor shall perform rainfall and groundwater monitoring.
1. Rainfall and groundwater levels will be recorded daily.
- F. The Contractor shall perform rainfall simulation (smoke testing) on subsystems that exhibit major sources of inflow infiltration.
1. Smoke testing will be performed during dry weather periods of the year with no more than two (2) manhole runs or 800 feet to be tested at one time.
 2. Photos or video recordings will be kept of each visible lead together with location identification.
 3. All interested parties such as residents, police, and fire departments will be notified before testing begins.
- G. The Contractor shall, in areas suspected of causing increased flow into the sanitary sewers, perform dye water testing.
- H. The Contractor shall provide a Quality Assurance Project Plan (QAPP) to the State if, acting under the authority of the United States Environmental Protection Agency (USEPA), the State requests this document.
- I. The Contractor shall submit a Final Written Summary of the project upon the expiration of this contract. This shall include a summary of all activities performed, any problems encountered, a complete budget summary of expenditures, and copies of items created such as the inventory and mapping, results of the manhole evaluation, flow

monitoring data, rainfall and groundwater records, results and documentation of smoke testing, and results of dye testing. The Contractor shall follow the schedule provided as Exhibit A: Schedule for Project Tasks appended hereto and incorporated by reference.

2. **Consideration**

Total remuneration under this contract shall not exceed \$51,000.00. (See Exhibit B: Total Estimated Project Expense Budget appended hereto and incorporated by reference).

3. **Term**

This contract shall be for a period of twelve (12) months. The commencement date of this agreement shall be the latter August 1, 2000, or the date the last State signatory signs this agreement (the "Commencement" date) and shall terminate on July 31, 2001, or twelve (12) months from the commencement date whichever is latter.

4. **Independent Contractor**

Both parties hereto, in the performance of this contract, will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for the Contractor's employees.

5. **Work Standards**

The Contractor agrees to execute its respective responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals.

6. **Contract Confidentiality of State Information**

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data; therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the State.

7. **Confidentiality of Data, Property Rights in Products, and Copyright Prohibition**

The Contractor further agrees that all information, data, findings, recommendations, proposals, etc., by whatever name described and by whatever form therein, secured, developed, written or produced by the Contractor in furtherance of this contract shall be the property of the State and that the Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or custody of the Contractor. By this contract the Contractor specifically waives and/or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc.

8. **Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memos, and other materials developed under this contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such matters will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State is prohibited. During the performance of the services, specified herein, the Contractor shall be responsible for any loss or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein, while they are in the possession of the Contractor and any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this contract shall be available to the State.

9. **Progress Reports**

The Contractor shall submit written quarterly progress reports and a written final summary project report to the State (see Section 1. Duties of Contractor). If deemed necessary, the State may request additional reports. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. The written reports will also be used by the State for the purpose of reporting the status of the project to the U.S. Environmental Protection Agency.

10. **Access to Records**

The Contractor and his subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government and copies thereof shall be furnished at no cost to the State if requested.

11. **Travel**

Expenditures made by the Contractor for travel will be reimbursed by the State at the current rate paid by the State of Indiana. Travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in Financial Management Circular #97-1.1. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness at least two weeks prior to the scheduled travel date.

12. **Assignment**

The Contractor shall not assign or subcontract the whole or any part of this contract without the State's prior written consent, except that the Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. Assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.

13. **Successors and Assignees**

The Contractor binds his successors, executors, administrators, and assignees to all covenants of this contract. Except as above set forth, the Contractor shall not assign, sublet or transfer interest in this contract without the prior written consent of the State of Indiana.

14. **Key Person(s)**

a. In the event that both parties have designated in an appendix that the individual(s) therein named are essential to the services offered pursuant to this contract, the parties agree that in the event that such individual or individuals are no longer employed during the term of this contract by the Contractor for whatever reason, the State shall have the right to terminate this contract upon thirty (30) days prior written notice.

b. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to the contract. Substitution of another for the Contractor shall not be permitted without express written permission from the State.

c. Nothing in subsections a. and b. above should be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

15. **Changes in Work**

In the event the State requires a major change in scope, character or complexity of the work after the work has progressed, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment, and the Contractor shall not commence any additional work or the change of the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

In the event the State agrees the project requires a minor change in scope, character or complexity of the work after the work has progressed, or a minor change is required in the budget without any change in the total cost of the project, such minor change may be made upon written request from the Contractors project director and written approval by the States project director but must comply with the terms of this contract and any underlying grant agreement to which the State is the Grantee.

16. **Force Majeure; Suspension and Termination**

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural disaster, actions or decrees of governmental bodies or communication line failure not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

17. **Renewal Option**

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director. The term of the contract may be entered into for any period of time, including any number of options to renew, not to exceed four (4) years.

18. **Nondiscrimination**

Pursuant to IC 22-9-1-10 and Civil Rights Act of 1964, Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders

prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

19. **Multi-term Funding Cancellation Clause**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a multi-term contract, the multi-term contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. **Termination for Convenience**

This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to the contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under which such termination becomes effective. The Contractor shall be compensated for services rendered prior to the effective date of termination. The State will not be liable for services performed after notice of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to contractor exceed the original contract price due on contract or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

21. **Conflict of Interest**

a. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

b. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

c. The Department will not exercise its right of cancellation under section B above if Contractor gives the department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.

d. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts which Contractor knows or reasonably could know.

22. **Taxes**

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this contract.

23. **Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-2-22-1 et seq., and IC 34-4-16-1.1 et seq.

24. **Compliance with Laws**

The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal amendment.

25. **Default by State**

If the State, sixty (60) days after written notice, fails to correct or cure any breach of this contract, then the Contractor may cancel and terminate this agreement and collect all monies due up to and including the date of termination.

26. **Governing Laws**

This contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

27. **Indemnification**

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State shall not provide such indemnification to the Contractor.

28. **Substantial Performance**

This contract shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

29. **Waiver of Rights**

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

30. **Payments**

All payment obligations shall be made in arrears in accordance with Indiana law, state fiscal policies and procedures.

31. **Disputes**

Should any disputes arise with respect to this contract, the Contractor and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this contract, which are not affected by the dispute. Should the Contractor fail to continue without delay to perform its responsibilities under this contract in the accomplishment of all non-disputed work, any additional costs incurred by the Contractor or the State as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State of Indiana for such costs. If the Contractor and the State cannot resolve a dispute within ten (10) calendar days following notification in writing by either party of the existence of said dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) calendar days after presentation of such dispute for his decision. His decision shall be final and conclusive unless the Contractor mails or otherwise furnishes to the Commissioner of Administration, within ten (10) days after receipt of the Commissioner's decision, a written appeal. Within ten (10) days of receipt by the Commissioner of a written request for appeal, he may reconsider his decision. If no reconsideration is provided within ten (10) days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this contract will not be cause for Contractor to terminate this contract, and the Contractor may bring suit to collect without following the disputes procedure contained herein.

32. Debarment and Suspension

The Contractor certifies, by entering into this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this contract by any federal or state department or agency. The term "principal" for purposes of this contract is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

33. Maintaining a Drug-Free Workplace

a. Contractor hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this agreement a drug-free workplace, and that it will give written notice to the contracting state agency and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of Contractor has been convicted of a criminal drug violation occurring in Contractor's workplace.

b. In addition to the provisions of subparagraph a. above, if the total contract amount set forth in this agreement is in excess of \$25,000.00, Contractor hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations contained in the Drug-Free Workplace Certification executed by Contractor in conjunction with this agreement and which is set forth in paragraph 34 of this contract.

c. It is further expressly agreed that the failure of Contractor to in good faith comply with the terms of subparagraph a. above, or falsifying or otherwise violating the terms of the certification referenced in subparagraph b. above, shall constitute a material breach of this

agreement, and shall entitle the State to impose sanctions against the Contractor including, but not limited to, suspension of contract payments, termination of this agreement and/or debarment of the Contractor from doing further business with the State for up to three (3) years.

34. Drug-Free Workplace Certification

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000, shall be valid unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

The Contractor/Grantee certifies and agrees that it will provide a drug-free workplace by:

- a. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- b. Establishing a drug-free awareness program to inform employees that (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- c. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- d. Notifying in writing the contracting State Agency and the Indiana Department of Administration within ten (10) days after receiving notice from an employee under subdivision (c) (2) above, or otherwise receiving actual notice of such conviction;
- e. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such

employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

f. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

35. **Non-Collusion and Acceptance**

The undersigned attests under penalties of perjury that he is the contracting party, or that he is the representative, agent, member or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof, including, if this contract is in excess of \$25,000, paragraph 34, Drug-Free Workplace Certification.

CONTRACTOR: Town of Milltown

By: David Skinner

Printed Name: David Skinner

Title: Town Council Pres

Date: 7-21-00

Attested by: Linda Pevlor


Printed Name: Linda Pevlor

Title: Clerk Treasurer

Date: 7-21-00


ARN A305-0-00-29

STATE USING AGENCY: Indiana Department of Environmental Management

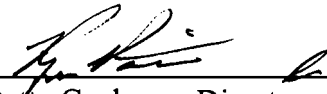


Lori F. Kaplan, Commissioner
Department of Environmental Management
State of Indiana
Date: 8-16-00

APPROVED:

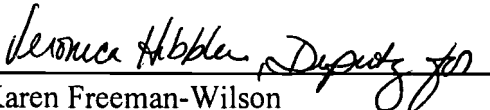


Glenn R. Lawrence, Commissioner
Department of Administration
State of Indiana
Date: 8-21-00



Betty Cockrum, Director
State Budget Agency
State of Indiana
Date: 8/22/2000

APPROVED AS TO FORM AND LEGALITY:



Karen Freeman-Wilson
Attorney General
State of Indiana
Date: 9/5/00

EXHIBIT A

Schedule for Project Tasks

The tasks and the associated time periods necessary for the project are as follows:

August 1, 2000	Begin inventory of collection system.
September, 2000	Conduct Smoke and Dye Testing.
October 31, 2000	First quarterly progress report due.
November, 2000	Conduct manhole inspection of collection system
December, 2000	Install rainfall/ groundwater gauging
January 31, 2001	Submit second quarterly report.
February, 2001	Commence with flow monitoring
March, 2001	Televisе selected sewer segments.
April 30, 2001	Submit third quarterly report.
May, 2001	Submit draft report for public input
June, 2001	Submit revised draft report to the Town.
June, 2001	Examine funding sources based on report.
July 31, 2001	Submit three copies of the final written report to the State discussing activities of the project, problems encountered, a copy of the data collected, and a final budget report

EXHIBIT B**Total Estimated Project Expense Budget**

<u>Type of Expenditures</u>	<u>Amount</u>
Salaries	\$0.00
Fringe Benefits	0.00
Travel	0.00
Equipment	0.00
Supplies	0.00
Contractual	51,000.00
Other	<u>0.00</u>
TOTAL	\$51,000.00